UZBEKISTAN

TRADE SUMMARY

The United States registered a trade surplus of $173 million with Uzbekistan in 2003. U.S. goods exports to Uzbekistan were $257 million in 2003, an 85.3 percent increase from 2002. U.S. imports from Uzbekistan were $84 million in 2003.

The U.S.-Uzbekistan Bilateral Trade Agreement, which came into force in 1994, provides for normal trade relations (NTR) between the United States and Uzbekistan and governs other aspects of the bilateral trade relationship. Uzbekistan is currently in the process of negotiating terms of accession to the World Trade Organization (WTO).

IMPORT POLICIES

The government of Uzbekistan restricts imports in many ways, including high import duties, licensing requirements for importers and wholesale traders, restricted access to retail space for sellers of imported items, physical closing of borders to shuttle traders and limited access to hard currency and local currency (soum).

Excise taxes are applied in a highly discriminatory manner to protect locally produced goods. According to reports from foreign investors, official tariffs are combined with unofficial, discriminatory charges resulting in total charges amounting to as much as 100 to 150 percent of the actual value of the product, making imported products virtually unaffordable. For example, imported liquor is reportedly subject to an excise tax of 90 percent in contrast to an excise tax of 40 percent to 65 percent applied to domestic liquors. Additionally, imported automobiles are subject to duties totaling approximately 150 percent by the time they reach the consumer.

Fears of a surge of imports caused the government of Uzbekistan to drastically restrict imports in 2002 through the imposition of official and unofficial import surcharges. Moreover, the government of Uzbekistan began requiring retailers to present certificates of origin and customs receipts for imported products upon the request of tax or customs authorities confiscating goods found without such certificates. Surveys of foreign companies consistently concluded that restrictions on access to local currency, necessary in order to transact business and pay employees, remain one of the worst of the many serious obstacles to doing business in Uzbekistan.

Due to the government of Uzbekistan's acceptance of the International Monetary Fund's Article VIII agreement as of October 15, 2003, dramatic legislative changes took place in the country's import registration system and overall import regime. The government of Uzbekistan eliminated its import registration system, which verified import prices (in an attempt to prevent over-invoicing) and rationed access to foreign exchange. However, the Government continues to restrict consumer goods imports in order to prevent hard currency flows and curb the threat of devaluation of the soum. The procedure importers must go through in order to buy foreign exchange has been substantially streamlined and now includes only three steps, each reportedly taking more than 2-3 business days each. The first largely technical step, is the registration of an import contract at the importer's bank. As a second step, the importer must register the contract with the customs committee. The paperwork is designed to ensure the proper disclosure of the customs value of the goods as well as their places of origin. Finally, on behalf of the importer, the commercial bank submits an application for hard-currency conversion to the Central Bank. The Central Bank then approves the application and allocates the requested amount of foreign exchange to the bank during a national trading session of foreign currency held by the Central Bank. The whole procedure takes between 5 and 7 days for most importers.

Clearance of import contracts with the state consulting company is no longer needed for customs registration, although the regulation requiring the registration has not been abolished. Reportedly, the State Customs Committee is still refusing to register old import contracts for goods from Kazakhstan and Kyrgyzstan dating back to 1999. The State Customs Committee still turns down about 5 percent of contracts submitted for registration, purportedly because of mistakes found in documents. Finally bank dealers report cases when the Central Bank did not approve applications for conversion for some of their clients who needed large sums of hard currency.

In addition to the official barriers, the customs clearance process is full of unofficial bureaucratic obstacles that lead to significant processing delays of two to three months, even for U.S.-Uzbek joint ventures. Other problems include arbitrary seizures of goods and frequent official and unofficial changes in customs procedures. Excessive documentation also makes the Uzbek importing process costly and time consuming. The lack of proper equipment and legislative regulations provide an environment in which customs officials on duty can arbitrarily make their own decisions on search and seizure procedures. The current procedures also create an intense rent-seeking environment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The system of standardization, accreditation and certification and the implementation of the Sanitary and Phytosanitary (SPS) Agreement in Uzbekistan still present significant barriers to trade. According to international practice, there should be a mandatory application of technical regulations, but standards should be voluntary. Currently, Uzbekistan applies mandatory technical regulations, including certain standards, which are not compliant with international practices. Uzbekistan is in the process of drafting a new law on technical regulations that would be compliant with international system of standardization, metrology, accreditation, certification and the SPS Agreement.

The Uzbek government is in the process of introducing an international accreditation system. Currently, the following legislative acts are operating in the field of SPS to varying degrees of international acceptance: Law on State Sanitary Control, Law on Veterinary Services (or Medicine), Law on Nature Protection, Law on the Quarantine of Plants, and Regulation of the Chief Inspection on Quarantine of Plants.

The government of Uzbekistan accepts U.S. manufacturers' self-certifications of conformance to foreign product standards and environmental restrictions. A new requirement, effective as of June 2003, requires that all products be labeled in Russian and Uzbek. Although this does not initially appear to be a traditional barrier to trade, the fact that other entities, including Government of Uzbekistan enterprises, are not held to this same standard presents unequal treatment of foreign companies.

GOVERNMENT PROCUREMENT

There is no systematic approach to government procurement in Uzbekistan. Instead, procurement decisions are generally made on a decentralized and *ad hoc* basis. Often the procurement practices of the central government are similar to those of many countries, with tenders, bid documents, bids and a formal contract award. A law enacted in 2002 created more transparency in the procurement process by mandating that all government procurement over $100,000 must be completed on a tender basis. However, many tenders are announced with short deadlines and are awarded to companies that provide the most lucrative insider deals. Uzbekistan is not a signatory of the WTO Agreement on Government Procurement.

There are numerous cases reported of the Uzbek government's failure to comply with contract obligations in relation to the process of procuring equipment, equipment pricing, and payment guarantees. There are several cases in which a U.S. company provided equipment from a government tender and was not paid for the equipment or goods.

EXPORT SUBSIDIES

The government of Uzbekistan's policies of import substitution and infant industry protection ensure that some form of export subsidy would apply to local industries. Export subsidies exist in the automotive sector, where local manufacturers are exempt from taxes, including value-added tax (VAT), customs duties and profit tax, totaling approximately 65 percent of their assumed profits.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Significant deficiencies remain in Uzbekistan's regime for the protection of IPR. The 1994 United States-Uzbekistan Bilateral Trade Agreement includes commitments on the protection and enforcement of IPR, a number of which have not yet been fulfilled. In addition, as part of its ongoing efforts to join the WTO, Uzbekistan must take steps to bring its IPR legislation into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Contrary to its bilateral obligations, Uzbekistan is not yet a member of either the Berne Convention for the Protection of Literary and Artistic Works or the Geneva Phonograms Convention, and Uzbek law does not provide protection for pre-existing works or sound recordings.

In addition, Uzbek law does not provide adequate authority to enforce IPR violations, and Uzbekistan has not yet amended its Criminal Code to include deterrent penalties for IPR violations, as required by the 1994 Bilateral Trade Agreement. Enforcement of IPR laws in Uzbekistan is also extremely weak. Due to lax enforcement, illegal optical media exports are currently allowed to freely cross the borders for sale in Uzbekistan.

In order to address deficiencies in its legal regime, the Uzbek parliament made minor changes to the Uzbek copyright law and added trademark protections in December 2000. Amendments in the 2000 session included additional protection to national authors and producers of sound recordings; however, they did not cover protections for all works and recordings. In October 2003, the government of Uzbekistan announced plans to amend a number of laws in order to bring Uzbekistan's IPR regime more fully into compliance with Uzbekistan's bilateral obligations and the requirements of the TRIPS Agreement. Work on these laws continues, and consultations are underway with the government of Uzbekistan to insure that Uzbek IPR laws are amended consistent with bilateral and international obligations. In February 2004, the government of Uzbekistan announced its intention to join both the Berne Convention and the Geneva Phonograms Convention.

SERVICES BARRIERS

For years, the largest barrier to foreign services firms entering the Uzbek market has been difficulty in currency conversion. However, the government's adoption of currency convertibility in October 2003 should ease the process of conversion. In the past, these provisions could only be waived by a special presidential decree granting the company the right to do business in dollars. To date, only a state-owned insurance company, Uzbekinvest, established under a special presidential decree and an American-Uzbek joint venture, UzAig, are allowed to conduct business in dollars. Although the Government of Uzbekistan has created an insurance supervisory board, there is not yet a system of licensing insurance companies. Services firms, therefore, can currently only operate in Uzbekistan on the basis of a governmental decree.

Uzbekistan imposes a ten percent withholding tax on reinsurance premiums for insurers in countries that, like the United States, do not have a double taxation treaty with Uzbekistan. Uzbek law grants state-owned companies a monopoly over certain forms of mandatory state insurance (i.e. mandatory insurance paid for out of the state budget).

Foreign banks and insurance firms may not operate in Uzbekistan except in a subsidiary capacity (a common requirement in other CIS countries) and are required to maintain a charter capitalization fund of $20 million. For Uzbek firms, the Government of Uzbekistan determines the required size of the charter funds on a case-by-case basis, leading to an unfair business environment.

INVESTMENT BARRIERS

To be considered an enterprise with foreign investment under Uzbek law, a firm must be at least 30 percent foreign-owned and have initial foreign equity of $150,000. Normally this equity is hidden through assets such as equipment or technical expertise. Although reduced from previous levels, these capital requirements are still high enough to exclude foreign investment by small companies. The Government of Uzbekistan has postponed consideration of proposals to ease these requirements further. U.S.-owned companies in Uzbekistan face cumbersome regulations and licensing requirements. Profit repatriation remains extremely difficult for foreign-owned companies, due to the lack of convertibility of the soum. Although the government of Uzbekistan legally adopted currency convertibility on October 15, 2003, a case has yet to arise in which foreign companies have been allowed to convert profits into hard currency for sums larger than a few hundred thousand dollars.

In the past, businesses were required to register with numerous government organizations and obtain licenses from separate entities. However, in 2001, the government of Uzbekistan attempted to introduce legislation to create a one stop shop to make the company registration process easier. These one stop shops are located in local government offices (Hokimiyats) throughout Uzbekistan and have reportedly improved individuals' abilities to form new businesses. Unfortunately, even with the new regulations, businesses discover local and federal regulatory road blocks that force them to continue the bureaucratic process at a minimum of between five and ten locations.

Uzbekistan's Tax Code, introduced for the first time only in 1998, lacks a few important provisions. For example, it allows no credit for VAT on capital imports, including plant, machinery and buildings. This puts firms operating in Uzbekistan at a competitive disadvantage compared to those in countries that do allow such credits. In addition, earnings of foreign-owned enterprises are subject to double taxation. Their earnings are taxed once when earned by the enterprise in Uzbekistan and then taxed again when remitted to the foreign parent. Another significant problem in the Uzbek Tax Code involves the classification of expenses. Many expenses that are deductible for the purposes of calculating taxable profits are not deductible under the Uzbek Tax code, thereby increasing the effective profits tax burden in comparison to other countries. In most countries, expenses such as advertising and business travel are not subject to taxation. However, in Uzbekistan, travel is not deductible and advertising is only deductible based on an archaic formula.

Two factors increase labor costs for foreign firms in Uzbekistan. Corporate income tax rates, although reduced in 2003, still total 20 percent, and the mandatory contribution for insurance from the payroll is currently 37.2 percent for 2003, a rate significantly higher than other similar countries. While most Uzbek companies do not comply with their tax duties, foreign investors generally feel obliged to adhere to the law. The government of Uzbekistan imposed minimum salary requirements in 2001 to obligate foreign firms to pay full taxes on their employees. U.S. companies have complained that Uzbek laws are not interpreted or applied in a consistent manner. On many occasions, local officials have interpreted laws in a manner that is detrimental to individual private investors and the business community at large.

Companies are particularly concerned with the consistent and fair application of the Foreign Investment Law, which contains a number of specific protections for foreign investors.

Because of the relatively prohibitive tax and regulatory environment in Uzbekistan, foreign investors in Uzbekistan whose projects would not be economically viable under the existing legislation are required to seek tax and regulatory abatements in the form of Cabinet of Ministers decrees, which are required to be signed by the President in order to be approved. While legally carrying less authority than a law, such decrees have been a generally effective means through which foreign investors in strategic industries (e.g., mining, oil and gas, and large manufacturing) contract for such investment projects. This process is lengthy and uncertain, however, and lacks the necessary transparency required to attract significant investment over the longer term. Despite the protections that such decrees have on the surface, investors working under Cabinet of Ministers decrees have still faced significant regulatory and bureaucratic impediments. In particular, corporate profit projections that are commonly utilized in many developing countries have very little merit in Uzbekistan, as the investment climate, even for those fortunate companies with a Cabinet of Ministers decree, is constantly in flux.

TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

The electronic commerce industry is terribly undeveloped in Uzbekistan, due to a non-market based economy and under-developed technology in the sector. In 2002, the government of Uzbekistan eliminated the monopoly previously held by a state-owned enterprise on access to external (international) Internet connections. While the government of Uzbekistan had not enforced this monopoly, the removal of this formal barrier to entry for Internet service providers (local and foreign) was a step towards a more open trading environment for electronic commerce.

OTHER BARRIERS

Persons doing business in Uzbekistan note that if they are engaged in a sector in which either the Government of Uzbekistan or an Uzbek-controlled firm is a competitor, they face increased bureaucratic hurdles and currency conversion problems. Often competitors are not allowed in the sector. Businesses also complain that they lack recourse under Uzbek law to international arbitration. Moreover, the judiciary in Uzbekistan is not independent. In the event of disputes, courts usually favor firms that are controlled or owned by the state. Trade disputes involving foreign-owned businesses are common and have proven to be nearly impossible to resolve even with high-level intervention from senior U.S. policymakers and legislators.

American investors unanimously complain that they do not control their corporate bank accounts in Uzbekistan. The main problem involves restrictions on businesses' access to, and use of, cash in their accounts. Every routine banking operation requires official permission. As a result, businesses expend an enormous amount of time on simple transactions. A March 24, 2000 decree improved this situation by allowing many farms, restaurants, cafes and other small and medium enterprises with foreign investment ($150,000 or more in foreign capital) to access their own funds in commercial bank accounts, so long as those funds were received and deposited within the previous ninety days.

Most other businesses may hold cash for only a small number of permitted purposes, such as paying salaries and travel expenses. All other money must be held in the bank. Cash receipts must be deposited on the day on which they are received. Even small purchases, such as office supplies, must be paid for via bank transfer. Use of petty cash is not allowed. Uzbek companies handle this problem with salary withdrawals for non-existent staff. Western accounting practices prevent American companies from using these deceptive practices, and instead companies are required to wait for potentially a week or more for a wire transfer to arrive before, for example, the copy machine or printer can be locally repaired in the official sector.

Bribery and other corrupt practices are common and represent another barrier to trade. Local and international entrepreneurs face bribes from a number of officials (tax, customs, police, fire/health/safety inspectors, and labor inspectors at the local, regional, and national levels). These problems are exacerbated by low salaries for officials and an opaque, cumbersome, and internally contradictory legal regime that makes it difficult for business owners to comply with Uzbek regulations.

The regulatory framework for joint ventures in Uzbekistan is extremely prohibitive to profitable trade. Many international corporations complain that the Government of Uzbekistan demands excessive documentation from corporations, including numerous financial reports, a significant indication of the heavy-handed control the Government places on foreign companies doing business in Uzbekistan.